

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0542, State of New Hampshire v. Randy Campney, Sr., the court on November 21, 2005, issued the following order:

The defendant, Randy Campney, appeals his convictions for burglary and theft by unauthorized taking. He contends that the trial court erred in denying his motion to suppress. We affirm.

In reviewing the trial court's ruling, we accept its factual findings unless they lack support in the record or are clearly erroneous; we review its legal conclusions *de novo*. State v. Wigin, 151 N.H. 305, 307 (2004).

The defendant argues that his warrantless arrest violated New York law and was not supported by reasonable cause that he had violated his parole or had lapsed into criminal ways. He contends that the evidence obtained as a result of the arrest should have been suppressed. The parties agree that New York law applies to this case. In addressing the validity of the defendant's arrest, the State waives any argument based upon reasonable cause that he had violated his parole.

The defendant was arrested while on parole when the New York State Division of Parole determined that he had committed burglaries while on work release prior to parole. The New York Board of Parole (board) is authorized to enact regulations addressing "its responsibility to revoke parole or conditional release of any person and authorize the issuance of a warrant for the retaking of such persons." 9 N. Y. Comp. Codes R. & Regs. § 8000.1(b)(6) (2005). The board may rescind parole where there is significant information that existed prior to the rendition of the parole release date where the information was not known by the board. 9 N. Y. Comp. Codes R. & Regs. § 8002.5(b)(2)(i) (2005); Ortiz v. New York State Bd. of Parole, 668 N.Y.S. 2d 823, 825 (App. Div. 1998).

The parties have cited no New York cases that directly address the rescission-related issues raised in this case. New York courts have found cases on parole revocation instructive when reviewing issues of first impression in rescission cases. *Id.* at 826.

The defendant was arrested without a warrant by a New York parole officer. We will assume without deciding that an arrest warrant was required. Although New York law requires that an arrest for violation of parole be preceded by an arrest warrant, the requirement has been held to be "more in the nature of

a procedural or housekeeping rule than a requirement designed to protect individual liberty. The type of warrant in question is not one issued by a neutral magistrate; rather, it is issued by an administrative officer who is basically a colleague of the officer who is seeking the warrant.” People v. Dyla, 536 N.Y.S 2d 799, 810 (App. Div. 1988). Therefore, even if we assume that a warrant is required prior to arrest in a case of parole rescission, we conclude that the State’s failure to obtain it did not violate the defendant’s constitutional rights and that suppression is not a remedy available under New York law.

Because reasonable cause to believe that grounds for parole rescission existed, we find no constitutional violation. See People v. Huntley, 371 N.E.2d 794, 796-98 (N.Y. 1977). Accordingly, we affirm the decision of the trial court denying the defendant’s motion to suppress.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,
Clerk**